



Federal Communications Commission  
Washington, D.C. 20554

December 29, 2005

**DA 05-3326**

**Released: December 29, 2005**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Ohio/Oklahoma Hearst-Argyle Television, Inc.  
WLWT(TV)  
c/o Brooks, Pierce, et al.  
P.O. Box 1800  
Raleigh, NC 27602

Re: Ohio/Oklahoma Hearst-Argyle Television, Inc.  
WLWT(TV), Cincinnati, OH  
Facility ID No. 46979  
File No. BRCT-20050601BQL

Dear Licensee:

This refers to your license renewal application for station WLWT(TV), Cincinnati, Ohio.

In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the amount of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Accordingly, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

Moreover, Section 73.3526 of the Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations.<sup>1</sup> As set forth in Section 73.3526(e)(11)(ii) of the Rules, each commercial television broadcast station is required to place in its public inspection file on a quarterly basis, records sufficient to allow substantiation of the licensee's certification in its renewal application, of compliance with the children's television commercial limits. Section 73.3526 also requires licensees to place records concerning commercial limits in the public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts

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<sup>1</sup> See 47 C.F.R. § 73.3526.

nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.<sup>2</sup>

On June 1, 2005, you filed the above-referenced license renewal application for station WLWT(TV). In response to Section IV, Question 3 of that application, you certify that, during the previous license term, station WLWT(TV) placed in the public inspection file at the appropriate times, all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17 to the renewal application, however, you state that a recent review of the station's public inspection file revealed that records regarding compliance with the commercial limits on children's programming for the fourth quarter of 1997 and the first and second quarters of 1998 had been "inadvertently removed and were missing from the public file." You claim that the licensee prepared these records in a timely manner and placed them in the public file. Finally, you report that, the licensee has identified and placed in the public file the appropriate records to substantiate its compliance with the commercial limits during the fourth quarter of 1997 and the first and second quarters of 1998.

Based upon the record before us, the violations described in your renewal application appear to have been isolated occurrences. Although we do not rule out more severe sanctions for violations of this nature in the future, we have determined that an admonition is appropriate at this time. Therefore, based upon the facts and circumstances before us, we ADMONISH you for the admitted violations of Section 73.3526(e)(11)(ii) of the Rules described in station WLWT(TV)'s renewal application.

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 309(k). Section 309(k) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>3</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."<sup>4</sup>

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<sup>2</sup> See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

<sup>3</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

<sup>4</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

The public inspection file rule serves the critical function of making available to the public important information related to station operations. On balance, however, we find that Ohio/Oklahoma Hearst-Argyle Television, Inc.'s violation of Section 73.3526 does not constitute a "serious violation" of the Commission's rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station WLWT(TV) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

Accordingly, IT IS ORDERED that, a copy of this Letter shall be sent by First Class and Certified Mail, Return Receipt Requested to the licensee at the address listed above, and to its counsel, Mark J. Prak, Esquire, Brooks Pierce, McLendon Humphrey & Leonard LLP, P.O. Box 1800, Raleigh, NC 27602.

Finally, IT IS ORDERED that, the application (File No. BRCT-20050601BQL) of Ohio/Oklahoma Hearst-Argyle Television, Inc. for renewal of license for station WLWT(TV), Cincinnati, Ohio, IS GRANTED.

Sincerely,

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau